THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 7 JUNE, 1957 Number 5

Hazards To Liberty

There are three functions in the law—investigation, prosecution, adjudication. Traditionally these functions have been separated. The grand jury investigates, an attorney for the government prosecutes, a judge makes his decision after a trial that is conducted publicly. In 1917, Michigan passed a law which blended the functions of the judge and the grand jury. A judge could summon witnesses before him and if he felt that a witness was evasive or not telling the truth, he could hold him in contempt of court, fine him $100, and put him in jail for sixty days. At the end of that time, the judge could call the witness before him once more and once more convict him. If at any time after sentence, the witness would talk freely, the judge could commute the sentence or suspend it.

This one-man grand jury was known in Michigan as the "portable grand jury," since the hearings could be held anywhere and at any time; they could be secret or public, as the judge chose.

In March 1948, the Supreme Court struck down the law as applied to a witness in a secret hearing before a judge who, in the midst of the secret investigation, charged him with contempt, sentenced him, and sent him off to jail. The Court ruled that the secrecy of the contempt trial violated the due process of law (July 22). It also held that an investigating officer could not in one breath transform himself into a judicial officer and in another breath make a criminal out of a witness. Traditional grand juries never punished witnesses who testified falsely or evasively. Punishment under our system requires notice of the offense and an opportunity to defend, the right of the accused to examine the witnesses, and the right to counsel.

> *Reformers often have a cause which makes a short cut seem justified. But one of the main objects of our Constitution is to see that short cuts are not taken. Experience showed that once one man's rights could be tampered with, all men's rights were in jeopardy.*

JUSTICE WILLIAM O. DOUGLAS
from ALMANAC OF LIBERTY

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IN THIS ISSUE

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 179 West Washington Street, Chicago 2, Illinois.

Solomon Jesmer Elected—Installation On June 14

Member Judge Jacob M. Braude of the Circuit Court was the main speaker at The Decalogue Society's annual meeting on May 14, at the Chicago Bar Association, 29 South LaSalle Street. President Morton Schaeffer presided. Past President Benjamin Weintroub, editor of The Decalogue Journal, presented inter-organization certificates of commendation for outstanding services to the Society in 1956 to Reginald J. Holzer and H. Burton Schatz.

The following were elected officers of the Society for the ensuing year:

President.....Solomon Jesmer
1st Vice President.....Alec E. Weinrob
2nd Vice President.....Meyer Weinberg
Treasurer.....Harry H. Malkin
Financial Secretary.....Judge Norman Eiger
Recording Secretary.....Michael Levin

For membership on the Board of Managers, to succeed themselves for a two-year term:

Bernard E. Epton — Harry G. Fins
Saul A. Epton — William D. Sampson

Elected to the Board of Managers for two-year terms:

Herman B. Goldstein — Stanley Stoller
Judge David Lefkovitz — John M. Weiner
Leonard L. Leon — Albert I. Zemel

E. Douglas Schwantes, President-elect of the Chicago Bar Association will be the principal speaker at the installation ceremonies.

Decalogue Outing On June 26 At Chevy Chase Country Club

Interest in The Decalogue Society of Lawyers annual outing on June 26 is mounting daily. Alec E. Weinrob, chairman, insists that the 1957 event at Chevy Chase Country Club, on Milwaukee Avenue (Route 21—one mile north of Wheeling, Illinois) will surpass in number of attractions all like affairs of prior years. Aside from the annual Decalogue Golf Tournament, with its valuable awards to the winners, there will be swimming exhibitions in the Chevy Chase luxurious outdoor pool, and horseshoes, chess and card games. As usual there will be available for members and their guests beautiful door prizes. Dinner at 6:30 P.M. in the air-conditioned dining room. Dancing to the music of the famous Hollywood Cavaliers orchestra.

Special attractions and awards have been arranged for the ladies. Mrs. David Lefkowitz, wife of Judge Lefkowitz, will review the best selling novel of the year, *Compulsion*, by Meyer Levin.

Marvin M. Victor and Favil David Berns are co-chairmen of the ticket committee. Tickets are $9.50 per person. Please telephone or write for your reservations to the Society's office, 180 West Washington Street, Andover 3-6493.

ACTIONABLE WORDS

By PHILIP R. DAVIS

Member Philip R. Davis is an author, lecturer, and an associate editor of the Chicago Bar Record. He has been engaged in active practice since 1917.

A physical invasion of the person is readily perceived and recognized; the scars of one struck by an automobile are easily recognizable. Personality, however, is intangible. Honor, reputation, and dignity are merely conceptual words whose connotation in terms of any individual, group, or property must be resolved in the mores of the society in which they occur. What is dignity in one place may be priggishness in another. In some communities an attack on reputation may be accepted as the usual method of political activity. In others it may be regarded as contrary to accepted social usage. In some societies men are touchy and in others thick-skinned. So, as you remember from your childhood, children sang, "Sticks and stones will break my bones, but names will never hurt me;" but Shakespeare wrote:

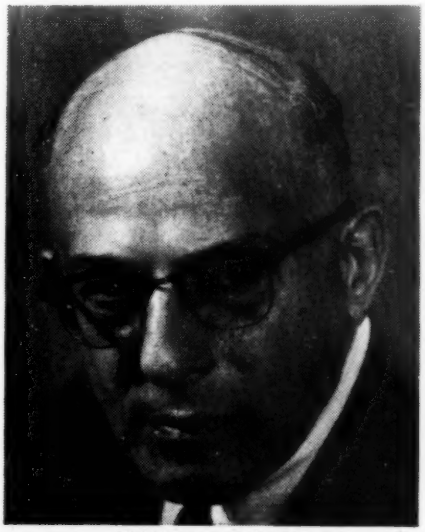
> Good name in man and woman, dear my Lord,
> Is the immediate jewel of their souls,
> Who steals my purse steals trash; t'is something, nothing, . . .
> But he that filches from me my good name
> Robs me of that which not enriches him
> But makes me poor indeed.

Men in society are as much creatures of their fellows as they are of themselves. Their personalities are a condition and a function not of themselves alone but of themselves in relationship to their group. So they tend to build a scale of honorific values which may range from inane conceit to real dignity, pride, and a sense of honor. In their relationships—whether these involve marriage and the home, sex, political or professional position, or business integrity—they guard their reputations and those values which inhere in their reputations, knowing that the sum total is their social and legal personality.

Harm to their personality may reduce men's condition in society, may injure their prospects or ability to maintain themselves and those toward whom they have obligations in the competitive and acquisitive world. Beyond the personality as such is the substance of the more material relationships. Men organize with their fellows in association for the conduct of business affairs and other functions of society.

A scandalous breath may poison the stream of association and reduce the intrinsic value of business and profession. To maintain their honor, dignity, and conduct, men once fought with lance and arms. The first libel laws arose out of the necessity to keep public peace when its breach was threatened by those who wished to repel attacks on honor. In what we are pleased to call a civilized community, men fight with the summons and complaint and their honor is adjudicated, not in the lists of Knighthood, but in the Courts of Law.

The injury to personality or substance inflicted by words wrongfully used is the graveman of the action of libel. It is a tort, that is, a civil wrong, which is usually grouped together with slander. The distinction between them lies in the permanence of form which libel assumes. "What gives the sting to the writing is its permanence of form. The spoken



PHILIP R. DAVIS

word dissolves, but the written one abides and perpetuates the scandal." Wolfson vs. Syracuse.[1] A libel occurs when the actionable expressions are uttered in permanent form by way of printed or written words, pictures, effiges, or any expressive symbol which may be utilized in communication to others. A slander is of somewhat lesser degree because it is uttered in the more temporary form of the spoken word. With regard to persons, a libel is generally an utterance which tends to degrade or shame one in the eyes of his fellows. Expressions which tend to lower the regard which persons have for the integrity or credit of a business house or other associations of men, or which tend to unjustly bring into disrepute their product are also libelous.

The tort of libel, that is, the civil wrong, is a

creature of the common law whose expressions and definitions are found in the judicial decisions of the courts and in statutes. In addition, libel is a crime in many states of the Union. As such, it is a creature of the Statutes which define and express both the nature of the libel and related privileges and immunities. One of the essential differences between the crime and the tort is the necessity for finding mischievous and malicious intent.

Criminal libel is prosecuted in the name of the people, not for the purpose of redressing the injury done to the individual, but of protecting the public peace. The reason assigned is that the criminal libel tends to provoke animosities physically expressed, and thereby, perhaps, to cause disturbance of the public peace and repose. Since civil libel is a creature of definition by the Court, and since those definitions are not always couched in similar language, an examination of several of the definitions is essential for a more complete guide to actionable words. In Peck vs. Tribune,[2] the Supreme Court defined it as follows:

> A libel is harmful on its face: if a man sees fit to publish manifestly hurtful statements concerning an individual without justification, the usual principles of tort will make him liable if the statements are false or are true only of someone else. An unprivileged falsehood need not entail universal hatred to constitute a cause of action.

One should note in connection with this definition the statement that it need not cause all society to hate the person libeled, thus limiting the area within which the libel must circulate to have effect.

Again in Dorr vs. U. S.,[3] the Supreme Court has defined libel as "an utterance tending to impugn the honesty, virtue, or reputation, or publish the alleged or natural defects of a person and thereby expose him to public hatred, contempt or ridicule." Observe here the inclusion in the definition of "alleged or natural defects." Another of that court's definitions holds:

> Every publication, either by writing, printing, or pictures, which charges upon or imputes to any person that which renders him liable to punishment, or which is calculated to make him infamous, odious or ridiculous, is prima facie a libel. (White vs. Nichols)[4]

A Pennsylvania court in Commonwealth vs. McClure[5] defined libel (in its most general and comprehensive sense) as "any publication injurious to the reputation of others." In Byrnes vs. Mathews,[6] a New York court held, "A malicious publication tending to expose a person to ridicule, contempt, hatred or degradation of character is libelous." And in McFadden vs. Journal,[7] in New York, the court defined libel in this way:

> A publication is libelous on its face when words impute to the plaintiff the commission of a crime or a contagious disorder tending to exclude him from society, or when the words are spoken or published with respect to his profession or trade, or to disparage him in public office or tend to bring him into ridicule and contempt.

To prevent the dangers incident to thansgression of the laws governing libel, one must have available criteria which will, in advance of utterance, alter the expression of the actionable words or thought to keep it within legal bounds. Words have many facets and many interpretations. Their values change with time, place, and association. Whether or not a word has a libelous connotation will therefore require analysis and perception in terms of its milieu and period. Words are but symbols and, like all symbols, have a varying impress. The red flag elates the Russian but enrages John Bull. To bear the cross is noble; to double cross, corrupt. Dealers in the symbols of communication must develop a hyper-sensitivity so that the buzzer, the gong, or the light appears in the mind and warns of the impending danger. As Mr. Justice Holmes has said: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary in color and content according to the circumstances and the time in which it is used. Towne vs. Eisner.[8]

Nor will mere knowledge of definitions derived from previously decided cases be a sufficient safeguard. The worker in words must develop a critical ability to recognize the significance of the word against the background of time and place, for words once libelous may now be innocent, and the mere fact that in a previous case the word was either excused or condemned is not necessarily a criterion. In the days of the bustle and crinoline, a picture of a woman, whether in form or words, showing her legs naked to the thighs, shoulders bared above her breast, with a scanty midriff covering, would have been libelous. Today, scantily clad women of the best families are depicted daily in newspapers and magazines not only without objection on their part, but with their consent and connivance. As standards of morality and mores change, the significance of conduct itself changes. As the relationships of men and women change, descriptions of those relationships change in the accepted value attributed to them, and the libel of yesterday may be the praise of today, or vice-versa.

This is particularly true of words with political and business imputation. Currently, the word "communist" is a term of frequent use. To call a man a "Communist" in Moscow would certainly not be objectionable to him. It might be a term of highest praise and social esteem. On the other hand, if one were to call a man in the Deep South a "Communist," he might be held up to scorn in his community, and certainly the term would be libelous. If a man running for public office today were called a Communist, the act would certainly be libelous.

So important is the element of currency that within a period of two years courts in New York wrote conflicting opinions to whether or not the word "Communist" is libelous within a period of transition. The political animus of a word does not change so quickly. So the word "Fascist" could be a term in point of place and time that was either libelous or non-libelous. When Winston Churchill was praising Mussolini and countenancing colored shirts in England, the word "Fascist" would not be libelous. After the "stab-in-the-back speech," however, it could have been libelous. The word "Nazi" at the time when men were praising Hitler for causing smoke to rise from all the stacks in Germany might not have been libelous. After the disclosures of Buchenwald, it might well have been. Undoubtedly, when we were at war, it was.

Likewise, the word "atheist" might be a term of disapprobation in a devoutly deist community and a word of praise in others. Similarly, if one were to say of a white man in Harlem or on Chicago's South Side that he was a friend of the Negro, the act would definitely help him toward political preferment. But if one were to call a candidate for office in Mississippi, or Georgia, or Louisiana a friend of the Negro, the act would not only harm him socially and politically but would probably be libelous.

It is a fact that words change their complexion as they move across time and space. Democracy meant one thing to the ancient Greek; when used by Jefferson it had a particular connotation in connection with our own political relationships. When used by a southern statesman defending the poll tax, it has another meaning. In Buiktoff vs. Viall[9] one finds the following:

> A newspaper printed an editorial in the form of a prayer to a State Senator. The editorial contained the phrases "his Majesty B. Divine Senator, compared with whom all other Senators are merely ciphers, mighty being-omnipotent—look with thy mighty eye alone . . ." Held libelous on grounds that the appellations were ironical and satirical and were calculated to injure the Senator by bringing shame and disgrace. If the language of the published article is ironical, if the language is basically ambiguous or figurative, courts and juries will understand it according to its true meaning and import and the sense in which it was intended to be gathered from the context and from all the facts and circumstances under which it was used.

Industries, professions, science, art, literature, and sports develop a jargon of their own. Words used within the limited sphere of a particular group can become libelous even tho they are not understood by the general public.

A case which illustrates the limitation of the meaning of words to a defined group arose in an action against the New York *Herald*. It had printed of a man that he had been riding with his "affinity" when he was arrested for reckless driving. In order to prove that the word "affinity" had a definite meaning to readers of the *Herald*, the plaintiff offered other editions of the paper referring to a scandal in which one Ferdinand Earle was involved where the word "affinity" was used to mean paramour. The word "affinity" is a common English word found in all English dictionaries, none of which at that time ascribed that particular invidious meaning to the word. The plaintiff urged that the specific, previous uses in the *Herald* of the word "affinity" had led its readers to associate it with illicit sexual relationships. The Court on appeal from a verdict for the plaintiff for $150,000.00 said:

> If, as claimed by plaintiff, and apparently conceded by the lower court, a new meaning had been attached to or coined for the word "affinity" shortly prior to the publication of the article complained of, that meaning should have been set forth in the complaint and a special issue tendered thereof. The rule in libel cases is that if a word has two meanings, one bad and one good, the good shall be taken unless by way of innuendo the bad meaning is brought to the attention of the court and relied upon. Grant vs. N.Y. *Herald*.[10]

The Virginia Law Review, 63 (1956), in a note entitled "Television Defamation—Libel or Slander?" traces the historical distinction in the development of libel and slander and concludes that T.V defamation is libel per se. In the 16th century the one common law remedy for defamation was an action on the case for words with damage. The threat to absolute monarchy presented by the printing press led to the adoption of the Roman Law for printed defamation. Then followed star-chamber proceedings in which sedition libel affecting state security as well as private libel leading to breaches of peace were considered crimes. With the abolition of the star chamber in 1641, the common law courts assumed jurisdiction in distinguishing between written and spoken defamation which has continued down to the present. Each new method has presented the Courts with the task of classifying it as libel, or slander. Analogies developed in radio, telephone, telegraph, and motion pictures drive me to the opinion that classifying an ad-libbed T.V. defamation as slander, while a telecast with a script is classified as libel (e.g., Remington vs. Bentley 88F Supp. 166), is illogical. The pictorial aspect of T.V. makes the capacity for harm from a false and injurious representation so great that all T.V. defamation should be classified as libel.

As yet, there is no act of Congress or a Supreme Court decision on the question of liability of broadcasters for defamatory utterances visual and oral.

Many cases in libel have been based on the publication of photographs. One of the leading cases is Peck vs. Tribune, in which Justice Holmes wrote the opinion.

An advertisement printed in the Chicago *Sunday*

Tribune consisted of the publication of a woman's portrait in an advertisement for whiskey in connection with a signed statement purporting to have been made by her to the effect that she was a nurse and used the whiskey for herself and her patients and recommended it. The name appended to this statement was that of an entirely different person from the one in the photograph. The publication of the portrait was made by mistake and without the knowledge that it was not a portrait of the woman whose picture it purported to be. Justice Holmes said that many might recognize the plaintiff's face without knowing her name, and those who did know it might be led to infer that she had sanctioned the publication under an alias. The fact that it was published by mistake was held not relevant because if the publication was libelous, the defendant took the risk.

An interesting old case involved a suit between an artist and his subject. The painter had done a portrait for which payment was refused. He thereupon sued and was defeated, but the subject of the portrait got a judgment for costs which he delivered to the Sheriff for execution. The Sheriff levied on the picture. Whereupon the painter altered the picture by painting the ears of an ass upon the head and caused a notice of the sale and the alteration in the picture to be published. Thereupon, the positions were reversed. The subject of the picture sued for libel, and it was held that he had a good cause of action. Mezzara's case.[12]

When a cartoon depicted the plaintiff throwing black splotches called "lies" at a rival candidate for office and black splotches representing a mud puddle labeled "Last Minute Lies" it was held libelous.

An interesting anecdote is pertinent. When the editor of a daily newspaper wrote an editorial in which he said, "Half of the City Council is crooked," a demand for retraction was met with an editorial stating, "Half of the City Council is honest."

In Ogren vs. the Rockford Star Printing Co.,[13] the Illinois Supreme Court said:

> When anyone becomes a candidate for public office conferred by the election of the people, he is considered as putting his character in issue, so far as it may respect his fitness and qualification for office, and everyone may freely comment on his conduct and actions. His acts may be canvassed and his conduct boldly censured. But publication of falsehood and calumny against public officers or candidates for such offices is an offense most dangerous to the people because the people may be deceived and reject the best citizen to their injury.

It has been repeatedly held that granted a privileged occasion, it must be used fairly and in good faith, with a view to the public interest and without evil or malicious intent, but it cannot be used to attack the private character.

In a celebrated case, Judge W. J. Gaynor, later himself Mayor of New York wrote a letter to the then Mayor, George B. McClellan, severely attacking the character of Police Commissioner Theodore A. Bingham.[14] The article was not only a comment upon his official acts, but defamatory of his character insofar as it charged him with incompetency, corruption, buffoonery, despotism, and lawlessness. The case reached the Court of Appeals and the Court said: "The privilege in such a case extends to a fair and honest statement of actual facts relating to public acts and reasonable and justifiable comment thereon and criticism thereof. It does not extend to private character."

There is no statutory privilege to serve as a defense for those who libel political leaders or bosses. The privilege extends only to libel of public officers or candidates for public office except in those cases where public leaders have a dual aspect as an officer as well; in such case privilege will apply.

Action for anonymous libel is frequent. A leading case of this subject arose in England. A local newspaper carried a report in a whimsical mood, describing a motor festival at Dieppe. It read in part:

> Upon the terrace marches the world, attracted by the motor races . . . Whist! There is Artemus Jones with a woman who is not his wife; who must be, you know, the other thing! whispers a fair neighbor of mine. . . .

The writer thought the name Artemus Jones was of his own coining. He knew no one by that name. But there appeared on the scene one Thomas Artemus Jones, a solicitor, who alleged that he was known as Artemus Jones, and that he had been grievously libeled by the article. The Court said that the use of a name may or may not be conclusive as to whom the writing was intended to refer, and that it made no difference whether the writer used the name unintentionally, by accident, or believing that no person by that name existed; but that if ordinary sensible readers believed, knowing the plaintiff, that the article referred to him, Thomas Artemus Jones should recover.

An interesting case is the action of Lew Brown vs. The New York *Evening Journal*. Brown was the author of many popular songs, including "My Song," made popular by Rudy Vallee in the "Scandals." In its column "The Toast of Broadway," the *Journal* printed a note to the effect that the song had been written by an eighteen-year-old high school boy. Brown asserted that "My Song" was an original composition and that the imputation of the article was that he was inefficient, dishonest, and lacking in professional ability. The article did not contain the names of Brown or his collaborator. The Court said:

> That the libelous matter did not specifically mention plaintiffs by name is unimportant; the complaint shows

that it referred to plaintiffs and would be so understood by the readers. (Brown vs. N. Y. *Evening Journal.*)

One will frequently see at the beginning of a book or film the legend: "The characters in this book are fictitious; any resemblance to living persons is purely coincidental." The phrase is probably meaningless in the event the suit is based on material contained in the book and if a real person is intended. It is obvious that one cannot delineate a character by a carefully drawn portrait, or locate the character in time and place as if it were a real character and avoid the consequences of such a portrait if it is libelous.

Calling an author a plagiarist is libelous per se. Georgette Corneal wrote a book called *The Great Day*. Winchell in the *Daily Mirror* said: "Helen Woodward re-wrote Georgette's tome *Great Day*." Miss Corneal sued, claiming that Winchell libeled her since the statement tended to show that she had falsified her authorship of the novel and that people would think she had to have help for which she had not given credit. Before it went to the jury, Winchell settled for a substantial sum.

Fair criticism of a book, play, work of art, musical composition or a motion picture is always allowable and often commendable. The same is true of sports.

[1] *Wolfson vs. Syracuse*—254 N. Y. App. Div. 211
[2] *Peck vs. Tribune*—214 U. S. 185
[3] *Dorr vs. U. S.*—195 U. S. 138
[4] *White vs. Nichols*—44 U. S. 3
[5] *Commonwealth vs. McClure* (Pennsylvania Case)—3 Kulp 464
[6] *Byrnes vs. Matthews*—12 N. Y. St. Rep. 74
[7] *McFadden vs. Journal*—28 N. Y. App. Div. 508
[8] *Towne vs. Eisner*—245 U. S. 418
[9] *Buiktoff vs. Viall*—84 Wis. 129
[10] *Grant vs. New York Herald*—138 N. Y. App. Div. 727
[12] *Mezzara Case*—2 City H. Rec. N. Y. 113
[13] *Ogren vs. Rockford Printing Company*—288 Ill. 405
[14] *Bingham vs. W. J. Gaynor*—141 N. Y. App. Div. 301 Affd. 203 N. Y. 33

THE DECALOGUE LIBRARY

Our Society maintains a complete working library for the practicing Illinois lawyer at its offices at 180 W. Washington Street.

Included in the library are the complete Illinois Supreme and Appellate Court reports and also the United States Supreme Court reports. Among the contents are Corpus Juris Secundum, the Illinois Digest, The Illinois Statutes Annotated, Ruling Case Law, and a Digest of the United States Supreme Court reports.

Members are invited to make regular use of our library to supplement research unavailable in their own libraries. Louis J. Nurenberg is chairman of The Decalogue Library committee.

Parker, Aleshire Praised

May 1, 1957

Parker, Aleshire & Company
175 West Jackson Boulevard

Gentlemen:

On April 1, 1957 I mailed my claim blanks covering my illness of several months to your office. On April 4th I received your remittance.

Of course, the rapidity with which you pay claims is not a new experience for me. I have always found this to be true as to any claims which I have had occasion to file since becoming a member of your group health and accident insurance plan.

One never anticipates being ill or hospitalized, but it surely gives you peace of mind to know that should the occasion arise a substantial part of your expenses are underwritten.

I know of no greater service that I can render to my fellow members of The Decalogue Society of Lawyers than to endorse your Health, Accident, Medical and Hospitalization Insurance through the Commercial Casualty Insurance Company.

Personally I would recommend it to every member. If he is not covered, it is a necessity. To those who already have some form of coverage the very reasonable cost for added security should be a special inducement.

Sincerely,
Morton Schaeffer

Applications for Membership

FAVIL DAVID BERNS, *Chairman Membership Committee*

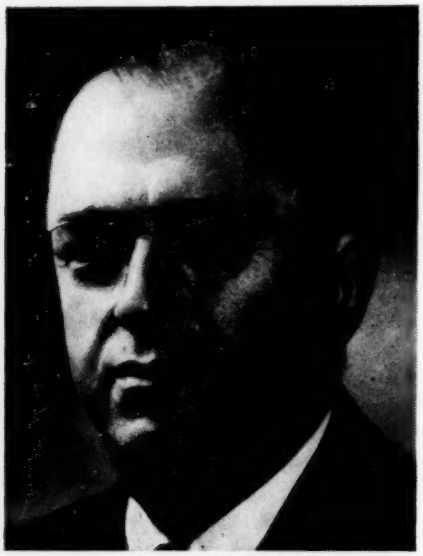
APPLICANTS	*SPONSORS*
Harry B. Dorfman	Carl B. Sussman Favil David Berns
Joel H. Fisher	Harry D. Cohn Favil D. Berns
Harold Koven	Alec E. Weinrob Solomon Jesmer
Ben E. Palmer	Alec E. Weinrob Solomon Jesmer
David Spagat	Favil D. Berns Benjamin Weintroub

DISCOVERY

By JULIUS JESMER

Member Julius Jesmer is general counsel for the Checker Taxi Company and attorney for the public liability department of the Yellow Cab Company.

Procedural law (and that, of course, includes discovery) is the tool with which the trial lawyer works. It is to him what the stethoscope and tongue-depressor are to the doctor; what the needle and thread and sewing machine are to the tailor. Whoever can best use these instruments of his trade or profession is a successful artist in his profession or trade.



JULIUS JESMER

The advocate of generations past was a shrewd and cunning individual. He had to rely largely upon his knowledge or his intuition as to what makes people "tick." He had to be a masterful cross-examiner and had to possess the ability or physical stature, or both, to extract information or browbeat admissions from witnesses who were for the most part the victims of his superior command of the environment; and, above all, he had to be an actor performing within the limitations of his personality. I cite as an example the great Fallon who, it is said, would stick pins into his bald head as if into a pin-cushion in Court before a jury; or the inimitable James Hamilton Lewis, with his elegant beard, frock coat, striped pants, gloves and spats. A lawyer today is none of these. In fact, there is not one of you here who would not in my opinion, be more than a match for the great James Hamilton Lewis of yesteryear.

The lawyer today practices his art of advocacy before a jury which is largely aware and sophisticated. The time-honored admonition to present-day jurors that they apply to the matters before them their experiences in the every-day affairs of life is not the empty phrase it formerly was, because our present-day jurors *do have* a store of experience and knowledge not even remotely enjoyed by their grandfathers. A lawyer today has to lay before the jury his wares—in the form of facts—and subject them to the competition of wares within the suitcase of his adversary, which are also in the form of facts.

Facts today, as always, are in the possession of three main sets of people.

1. The plaintiff and his allies.
2. The defendant and his allies.
3. Strangers to both adversaries.

And so the tool now known as "discovery" has been evolved and fashioned as a means of ferreting out and making available to litigants the facts they need in order to enable them to present their respective cases to the jury or the court.

Discovery is a creation of the legislature. It derives its existence from Section 58 of the Civil Practice Act. Because this Section is so basic and also so brief I shall quote it in full, including the controversial Sub-section 3:

> (1) Discovery, admissions of fact and of genuineness of documents and answers to interrogatories shall be in accordance with rules.
>
> (2) The taking of depositions, whether for use in evidence or for purposes of discovery in proceedings in this State or elsewhere, and fees and charges in connection therewith, shall be in accordance with rules.
>
> (3) A party shall not be required to furnish the names or addresses of his witnesses.

The implementation of the statutory right of discovery is, of course, effected by means of Supreme Court Rules 17 and 19 and their sub-sections.

We have under the Statute and Rules 17 and 19 three methods of discovery. Rule 18 is not in any sense a discovery rule. It is designed to simplify and expedite the presentation of evidence at the trial. It is strictly a procedural rule, in part pre-trial and in part at trial.

Rule 17 provides the means for discovery of documents and tangible things for examination, inspection, and photographing or reproduction. This in-

cludes access to real estate. There is a difference in the use of this rule and the others relating to discovery, in that application must be made to the Court for an order permitting resort to its provisions; whereas, the other sections are, generally speaking, self-executing.

The second method of discovery is discovery by deposition, oral or written, provided for by Rule 19 and Sections 1 to 10, and Section 12; and the third method is by written interrogatories to parties, provided for by Section 11 of Rule 19.

As stated, we have, aside from Rule 17, which deals with inspection, copying, photographing, or testing documents or things, two methods of discovery: one, by way of oral and written depositions; and two, by way of written interrogatories to parties. Personally, I see no difference between the term "written interrogatories" and "written depositions." The rule makes the distinction that interrogatories are propounded to parties only.

Section 7 of Rule 19 provides that "a party desiring to take the deposition *of any person* (notice that it does not say any person not a party) upon written questions shall serve them upon *the other parties. . . .*" Then, having provided for the mechanical formalities with respect to these "written questions," the rule proceeds to say that "No party, attorney, or person interested in the event of the action shall be present during the taking of the depositions or dictate, write, or draw up any answer to the questions." Apparently the word "deposition" means here the place where the answers to the questions are given.

Here several interesting questions present themselves: Does this rule mean that no written deposition may be taken or given by a party? I mean "given" in a case where the party cannot come in person to testify. If such is not the case, then what of the provision that no party or person interested in the event of the action shall be present during the taking of the deposition? On the other hand, if you may take his deposition on written questions, can you prevent a party from having his counsel present? Assuming that you have found a satisfactory answer to these questions, suppose now that you wish to discover information by means of written depositions from a distant witness who is not a party, so that you cannot serve interrogatories upon him because, as you remember, interrogatories may be served only upon parties. But suppose he happens to be "interested in the event of the action." How can this individual not be present at the deposition, much less not dictate, write or draw up any answer to the questions? If, misguidedly, you seek some wise answer from me to these puzzlers, I must confess my inability to supply you with the answers.

Before considering the other forms of discovery, I wish to touch upon one form which has recently been opened up in this State by the decision of the Illinois Supreme Court in the Noren case and which finally permits the defendant in a suit anywhere in the State for personal injury to have a physical and medical examination of the plaintiff, as is the case in Federal Courts.

People ex rel. Robert Noren vs. John T. Dempsey. Ill. S. C. 34076, 1957, not yet reported.

Contrary to the rather widespread opinion among lawyers, discovery by deposition, written or oral, and discovery by written interrogatories, are not mutually exclusive. In fact, Section 11 specifically says that interrogatories may be served after a deposition has been taken, and a deposition may be taken after interrogatories have been answered. It even says that the number of interrogatories or of sets of interrogatories is not limited except by safeguards against unreasonableness, oppression, and the like.

It is always a good practice to consult the rules before and during the setting in motion of the machinery for discovery, if only for the reassurance that you get from the knowledge that you are on firm ground. A great deal of satisfaction also can come from the feeling that in time your adversaries will question less and less and respect more and more your actions in that regard, because they will come to know that you generally do not go off "half-cocked."

Many lawyers overlook the requirement that discovery, whether by deposition or written interrogatories, cannot be had without leave of Court prior to the time when all defendants have appeared or are required to appear. This is a very important provision, and the failure to comply with it may be costly. So the thing to do in cases where you represent less than all the defendants and you wish discovery is to check the record for appearances and return of summons. If your adversary has failed to serve all the defendants, get an order of court permitting you to proceed with your discovery.

It is well to keep in mind that the processes that you set in motion to obtain discovery are often a great source of annoyance to your adversary. This is so for several reasons: More often than not you are seeking to make him disgorge information which he hoped would be neglected or forgotten or otherwise not be obtained. Almost always the time you choose for the deposition or for serving the interrogatories upon him is the most inopportune you could have possibly chosen. So to save the wear and tear upon yourself, if not upon your adversary, avoid petty annoyances by giving your adversary *really* reasonable notice in advance of the time and place of the taking of depositions. (The time for answering inter-

rogatories is, of course, set by rule.) Never take a deposition before a notary who is either an associate or partner or relative of yours, or of your client. This would, I think, be good practice even if it were not enjoined by Section 6 of the rule. As much for my own sake, as for the sake of courtesy, I make it an inviolable practice to have my secretary call my adversary's office on the morning when a deposition of his client is scheduled to remind him of that fact. This is a service that has come to be both expected and appreciated by my adversaries. And it really costs very little.

We come now to the substance itself of the rules relating to discovery either by deposition or by written interrogatories. Here it should be noted that Section 4 of the rule as to written interrogatories provides that interrogatories may relate to any matters which might be inquired into by deposition, and that they may be used (i.e. the answers may be used) in evidence to the same extent as the deposition of an adverse party.

I think that if Section 4 of Rule 19 were to say that a deponent (and always remember that this also means a party who must answer interrogatories) may be examined regarding any matter not privileged relating to the merits of the matter in litigation, it would be sufficient. The following Section 5 deals, of course, with what is privileged against discovery and provides for safeguards by court orders for the protection of both parties and deponents. It should be noted that the rule protects parties against raids not only upon communications between them and their counsel, but even upon memoranda, reports or documents made by or for a party in *preparation for trial*. And, unlike the situation in the Federal Courts, under the authority of Hickman v. Taylor, 329 U.S. 495, the attorney's "work product" is also immune from discovery.

I should like at this point to discuss briefly the Krupp case (Krupp v. C.T.A. 8 Ill. 2nd 37) first, because it contains language which many of you, as well as I, have heard so often from Judge Harry M. Fisher that it sounds almost like a truism. This "discovery before trial presupposes a range of relevance and materiality which includes not only what is admissible at the trial, but also that which *leads* to what is admissible at the trial." But the Krupp case is important in that in the opinion of many it comes squarely in conflict with Sub-section 3 of Section 58, which I now quote again,:

> A party shall not be required to furnish the names and addresses of his witnesses.

It should be remembered that the Krupp case was decided in January, 1956, and rehearing was denied in March, 1956. Yet, although Section 58 of the Practice Act was then in effect, the opinion completely ignores the statute, and makes this startling but familiar assertion: "Fairly read, the interrogatories use the term 'witness' in the primary sense of those who have personal knowledge of the event, and not in the technical sense of those who are to be called to testify at the trial." The opinion completely overlooks the fact that the statute itself makes no such distinction. It says that "a party shall not be required to furnish the names and addresses of his witnesses." In this connection, however, and in view of the pendency before the Supreme Court on the rehearing of another case in which the C.T.A. is battling against inevitability, I should like to quote a gem from the Noren case:

> "Moreover, it involves the dubious assumption that the legislature could today constitutionally cut off a reasonable and appropriate method of getting at the truth in a judicial controversy."

It would therefore seem to be a safe assumption that except in such matters as are protected from discovery by Section 5 of the rule, anything is fair game for the hunter in the field of discovery.

Today, more than ever, it is true that your lawsuit is won in the preparation or lost for lack of preparation. And your discovery procedure is an important pillar in the structure of your case, which your preparation has erected. For that reason I would no more entrust the task of preparation by discovery to an inexperienced lawyer than I would the trial of an important case itself. As you can readily see, the preparation, for example, of interrogatories calls for a knowledge of your case and familiarity with the facts and issues, without which you cannot know what information and what admissions and denials to extract. For it is by means of interrogatories that you can frequently discover not only what your adversary knows or does not know, but also where he stands and whither he plans to go.

The rules generally provide quite adequate protection against the antics of the sharp and unscrupulous practitioner who seeks by abuse of the rules to gain an improper advantage over his adversary. One of the tricks employed is to get you to waive signature of the deposition before it is taken. Then, if it suits his purpose, he does nothing more about it. And so, if you want a copy of the transcript you must order an original and he gets his at carbon-copy prices. But if you look closely at the rule—Subsection 4 of Section 6—you will see that unless signature is waived by the *deponent*, as well as by the parties, the deposition *must* be submitted to the deponent for examination and signature. So, unless you know your adversary to be fair and not prone to "throwing a curve" every now and then, *don't waive signature* unless he orders an original, so that you can order a copy if you want one. Other-

wise, compel him, in compliance with the rules, to submit the transcript to the witness for examination and signature. Then you can also order a copy at carbon-copy price.

Section 8 of the discovery rules provides for the means by which the attendance of a party or a witness who is not a party may be compelled. The latter, must, of course, appear if served with a subpoena or subpoena duces tecum. The party, however, must appear on notice to appear. One problem in connection with this section sometimes arises in the case of a corporation. The rule says that an officer or agent of the party in the case of a corporation may be required to appear. But the question then arises as to who answers the description of "agent." Albert Jenner says in his notes that the comparable Federal Rule 37d is narrower in its application, applying only to parties and their managing agents, and that the Illinois rule applies to any "agent." Judge Harry M. Fisher, in the absence of any specific provision in the rule, applies to it the language of Section 60 of the Practice Act, which permits the calling for cross-examination at the trial of the officers, directors, managing agents or foreman of a party. The judges of the Municipal Court are divided in their interpretation of this rule, and therefore in that Court, unlike the case of the Circuit and Superior Courts, inequality of application results.

Finally, if you will permit me the luxury of offering you a bit of advice, and if you limit me to just one item, I would say to you, don't cut corners with your case. If it is an important one, you stand to lose a great deal more than you save by having some lawyer unfamiliar with your case and with our rules of procedure and of evidence attend and represent you at a deposition some distance away from here. I shall cite as an illustration one case in point. A very well-known and able Chicago lawyer set up a deposition in Portland, Oregon. He commissioned an Oregon lawyer to handle the matter for him. But I attended the deposition myself, and, in addition, took along Dr. Sydney Greenspahn to aid and advise me with any medical problems that might arise. It so happens that the rules of evidence in Oregon appear to be quite "lax-liberal," some of you would say. My poor adversary could not understand why I persisted in making so many objections. The more this went on, the more irritated he became. Finally, I offered to lay the technical foundation for him or to show him how to do it himself. He rejected my magnanimous offer with great scorn, saying that he had forgotten more about how to try a lawsuit than I would ever learn. I agreed with him. In fact, he had forgotten too much. Needless to say, at the trial my objections to the evidence were sustained in toto, and in doing so the judge pointed to the fact that although the objections were technical and procedural, I offered my assistance in meeting them; and since my adversary rejected the offer, the evidence, consisting of electro-encephlogram graphs, was excluded.

The following editorial on member Maxwell Abbell, which appeared on May 8, is reprinted with the permission of The Chicago Daily News.

HONORING ABBELL

A WELL-MERITED HONOR for a distinguished Chicagoan will be conferred on Sunday evening, when the Greater Chicago Committee, State of Israel Bonds, celebrates the ninth anniversary of the establishment of Israel as a state.

The occasion will be an Israel bond dinner at the Sherman, at which Maxwell Abbell, attorney, accountant and hotel operator, will be the guest of honor.

A leader in Jewish charitable and religious affairs since 1925, Abbell is a former president of the United Synagog of America and was the founder of the synagog and temple division of the Israel bond campaign. Among the public posts in which he has served with distinction was the chairmanship of President Eisenhower's Committee on Government Employment Policy.

We join with his fellow Chicagoans in saluting Maxwell Abbell for the vigor and devotion with which he has supported democratic ideals.

AN ANCIENT JURIST

There was a jurist in the days of old
Whom grace of Fate made judge, it was a pity!
Some said that he was learned in Coke and Chitty,
And therefore had a right to roar and scold
And babble in a manner manifold.
So that the rumblings of a noisy city,
Scarce drowned his voice, he was so very witty,
Tempestuous and blustering and cold.
This legal Vulcan let the hammer drop
From day to day and fashioned strange decrees,
And made all suitors very ill at ease
Because he roared and found no way to stop.
A wag at last stuck up such words as these:
"This is a court, and not a boiler shop."

—Edgar L. Masters.

A Commission To Hear Personal Injury Cases

From an address on September 28 before The Decalogue Society by Mr. Werner W. Schroeder, president of The Chicago Bar Association and General Counsel for the Chicago Transit Authority; auspices of our Forum committee, Louis L. Karton, chairman.

Condensed by member LEONARD L. LEON

Administrative commission settlement of accident claims that nationally now cost about four and a half billion dollars yearly was outlined by Werner W. Schroeder as an effective means of reducing the costs and eliminating glaring inequities in present settlement procedures. The Commissions, if authorized by legislative enactments, would operate similarly to Workmen's Compensation Commissions and would make claims' settlements on the basis of predetermined scales of values for each type of accident claim.

Intolerable evils of existing procedures, including ambulance chasing, wide variance in awards, long and costly delays in obtaining and collecting judgments and over-loading of the courts, would be eliminated or substantially reduced, according to Mr. Schroeder.

In Chicago, Mr. Schroeder said, more than 42 per cent of the time of the Superior and Circuit Courts must be devoted to personal injury cases, and four to five years elapse before newly filed cases can be advanced to trial.

The cost of injuries and property damage has become one of the great expenses of local transit operation. Not only has this cost increased in marked degree in transit operation; it has similarly increased in the operation of privately owned automobiles and trucks. Today the cost of injuries and damages resulting from the transportation of people and goods on streets and highways is a major expense in American economic life, and the adjudication of personal injury and property damage cases is burdening the courts in a manner without precedent in judicial history.

This upward trend is not peculiar to C.T.A. or to the transit industry. It is general throughout American industry. Chicago automobile insurance rates for bodily injury have increased from $21 in 1946 to $36 in 1956, or 71%. This is almost exactly the same percentage of increase experienced by Chicago transit—69%—during the same period and has resulted in a terrific impact upon the national economy.

The National Safety Council has estimated that in 1955, 9,913,100 automobile accidents took place, resulting in death, personal injuries or property damaged, as compared to their estimate of 6,150,000 automobile accidents in 1946, an increase of 61%. It also estimated the cost of the 1955 accidents to be $4.52 billion dollars as against an estimate of $2.20 billion dollars in 1946, an increase of 105%.

The time of the courts spent on public liability and property damage cases amounts to a substantial burden on the taxpayer, of which he has little or no knowledge. An analysis of estimated revenues from fee offices and appropriation for operation of the Cook County, Illinois, Superior and Circuit Courts for the year 1956 reveals that the average net cost per court case disposed of amounts to $152, and that 42½% of the time of these courts is consumed in the disposition of personal injury cases.

Another public cost, impossible to estimate, is the delay that has been caused in court cases. Because of the large backlog of law cases, it is estimated that a period of four to five years will, on the average, elapse between the filing and trial of newly-filed cases.

The estimated cost of $152 per case given above is not complete. It does not include certain overhead costs, such as capital investments in court houses and courtrooms. Futhermore, the estimate is inadequate as personal injury cases consume more court time on the average than other cases, because of the frequency of jury trials in that type of litigation.

It might seem that with over 7,000 lawyers in actual practice in and near Chicago, there would be a spread of personal injury cases among this group. However, the vast bulk of personal injury cases are concentrated in the hands of fewer than 100 lawyers or law firms who seem to specialize in that type of work. The result is that often there is continuance after continuance in the trial of this type of case. This is due to a rule of the courts that if a lawyer is engaged in one court, he cannot be forced to trial in another court. Because of the innumerable continuances that result from this situation, the average delay period in disposition of personal injury cases has greatly increased.

The reasons for the concentration in the hands of a few are not uniform. In some cases individual lawyers have developed great talent in the handling of these cases. This talent naturally attracts additional employment. On the other hand, there are some whose talents are greater in the acquisition of such cases than in the actual disposition. Such lawyers are good at making settlements, and in ex-

tremities hire specialists to try the cases when there are no other ways out. There are reports that some lawyers have what are called "ambulance chasers" to solicit injured persons, which, if true, would account for some of the concentration of this type of law work in a small number of offices.

If both sides were in a mood to dispose of a case by settlement, the pre-trial procedure, which is made available in the courts, would be effective in cutting down the number of cases. Many defendants and their insurance carriers are not interested in the early and rapid disposition of cases. This lack of cooperation by such defendants, added to the concentration of many plaintiffs' cases in the hands of a few lawyers and law firms, is one of the large causes for the congestion of court calendars.

Nor does the estimate of $152 per case include the value of time of the citizens and litigants who must participate in the disposal of each jury case. The typical jury trial requires the services of twenty people. The salary of the judge, bailiffs, clerk and the per diem of the jurors is included in the $152, but the fees of counsel and the court reporters and the time lost from regular occupations by the jurors are not included. That this constitutes a considerable economic burden cannot be doubted.

If the costs of jury trials were subjected to the well known American custom of slashing unnecessary expense, there can be no doubt that the jury system would be subject to great changes. The history of our law has made the jury system sacrosanct in certain areas. Yet the demands placed upon legal machinery by modern social and economic developments have dispensed with the jury system in many instances. Some of them are the following:

(1) Workmen's Compensation.
(2) The fixing of utility rates.
(3) Taxes of every kind are decided, assessed, and collected without the wisdom of a jury.
(4) Licensing of professions, skills and occupations.
(5) Estates are administered, without the aid of juries, except in limited scope.
(6) Chancery jurisdiction of the courts.

Anglo-Saxon and American ingenuity has found a way to solve these large and difficult problems without the intervention of the 20 persons necessary in a jury trial.

Can the continuance of the jury system in the large area of personal injury cases be justified on the basis that the jury system is efficient? Many believe not. Some of the elements which contribute to the inefficiency of the jury system are:

(1) Where, as in personal injury cases, negligence is an important element, the judgment of the jury is far from infallible. The norm established for the determination of negligence is of such an indefinite character that almost any juror is entitled to his own guess as to whether there was or was not negligence. Persons untrained in the legal concept of "due care" are required to apply that test to complicated states of fact.

(2) The variations in verdicts rendered by different juries suggest the probability of injustice in the amounts awarded as between various claimants having sustained substantially similar injuries or damages. This is due in part to non-uniformity as respects (A) Generosity with other people's money; (B) The greater ability of some lawyers; (C) The difference in the doctors who are called as witnesses; (D) The personality of the individual plaintiff, and the impression which he makes upon the jury; (E) Whether the attorney for the plaintiff is more impressive to the jury and more successful in gaining its confidence than is the attorney for the defendant; (F) In a limited number of cases, the amounts may be affected by unscrupulous tactics which may be employed by attorneys or doctors in the presentation of the case, either for the plaintiffs or for the defendants.

There is a further great defect in the treatment of the public in personal injury matters. Notwithstanding some efforts to pass financial responsibility laws, it is a pitiful fact that 35% of automobile accidents are caused by motorists who are uninsured. This causes a great injustice to thousands of persons who are entitled to recover something. This lack of financial responsibility on the part of uninsured motorists, and an inability to recover in the case of injuries or damages caused by hit-and-run drivers, cause an injustice in the entire situation for which our law, has, up to now, found no adequate remedy.

From the foregoing discussion, it is obvious that there are many glaring defects in the present system of determining liability, the dollar amount of the damages, as well as in the collection of judgments, if and when obtained.

Two remedies have been under discussion, and to some extent have been tried. Both are based upon the premise that no license to operate a motor vehicle be granted unless the owner is insured, or there is proof of ability to pay. One application of that idea would leave the procedural methods of obtaining compensation for personal injury or property damage unchanged. The other contemplates procedural change so as to place liability arising from the operation of motor vehicles under a system analogous to the workmen's compensation laws.

The system of compulsory insurance, without pro-

cedural changes, has not been widely followed and has given rise to some very strong objections. Besides the objections, there are the others that a plan of compulsory insurance does not overcome the defects in the jury trial system alluded to earlier in this chapter.

The need for improved substantive law as well as improved procedure in the field of injuries and property damage arising out of motor vehicle operation was recognized over twenty-five years ago, when the Columbia University for Research in the Social Sciences appointed an impartial committee to study compensation for automobile accidents. The Columbia Committee stated its conclusions as follows:

> "The generally prevailing system of providing damages for motor vehicle accidents is inadequate to meet existing conditions.
>
> . . . The Committee favors the plan of compensation with limited liability and without regard to fault, analogous to that of the Workmen's Compensation Laws . . .

The desirability of compulsory compensation insurance, so evident in 1932, is no less today. As is the case in all controversial subjects, there are many prominent men who are as firmly convinced that compulsory insurance of any kind is not the solution of the problem.

Another approach to the problem might be to have an act similar to the Workmen's Compensation Act applicable only to injuries arising out of the activities and operations of municipal corporations. A compensation plan applicable to municipal corporations is a drastic departure from practice and from customary thinking. It is not to be expected that it will be embraced with immediate enthusiasm.

Some of the pros and cons may be summarized as follows:

(1) In favor of the idea; it would eliminate many and perhaps all of the inequities that now prevail in the award for personal injuries and property damage.

(2) Under a compensation system, the percentage of attorney's fees is always much more reasonable.

(3) The courts would be relieved of a tremendous burden of jury cases.

(4) The delays would be cut down to a minimum. An injured person would probably receive his award in one-fifth or less of the time that is required for recovery in the average jury case.

(5) The over-all cost of paying claims and handling claims would be materially reduced.

(6) The disposition of the cases would probably be on a more scientific and therefore on a more equitable basis to the injured parties.

Against the plan, the following objections would probably be urged.

(1) The number of such claims which can be filed will probably be increased somewhat.

(2) That part of the public which hopes for a large jury verdict, and would rather take a chance than to take a smaller amount, probably would be dissatisfied with this plan.

(3) At least one segment of the Bar—those lawyers who are making considerable income by the handling of personal injury cases—undoubtedly would be opposed to the plan.

These or other arguments must be weighed against each other to determine the best plan for the benefit of the general public as well as for those who suffer loss through the activities of municipal corporations. On the whole it is believed that the arguments in favor of the idea are much more potent. The injustice and economic burden involved in this great problem are such that it is imperative in the public interest to develop procedures that assure equity and even-handed justice to injured parties.

Undoubtedly difficulties confront anyone who would attempt the adoption of the plan outlined in this Chapter. There would most likely be formidable opposition on the part of some plaintiffs' lawyers. Some opposition from the general public might develop. But the injustices of the present system will sooner or later force some drastic change—possibly to the system which has been here discussed.

NOTE WARSAW GHETTO UPRISING

The Decalogue Society participated as a co-sponsoring organization in a city-wide commemoration on April 13, in the Morrison Hotel of the fourteenth (1943-57) anniversary of the Warsaw Ghetto uprising. The affair was under the auspices of the Chicago Yizkor Committee for six million martyrs. The committee had enlisted more than fifty Jewish groups to mark this occasion.

COVENANT CLUB ELECTS

The following members of our Society were elected at the last annual meeting of the Covenant Club on May 9 as officers and members of the Board.

Philip H. Mitchel, 1st vice president, Nathan Schwartz, 2nd vice president, Norman Becker, financial Secretary, Samuel J. Baskin, Jr. past president. Bernard Epstein, Louis Steinberg, and George L. Weisbard were elected members of the Board.

BOOK REVIEWS

GOVERNMENT LAWYER, by Malcolm A. Hoffmann. Bookman Associates, Inc. 242 pp. $4.00.

Reviewed by DAVID F. SILVERZWEIG

The bar of justice is often the bedroom mirror of life. Rich man, poor man, beggar, thief, every segment of society at one time or another stands undraped before the law and the lawyer. From the experience of individual lawyers in diverse fields of practice have come such books as *Country Lawyer, City Lawyer, Labor Lawyer, Philadelphia Lawyer,* and, of course, the many volumes by lawyers whose specialty is the practice of criminal law.

The Government, too, has a character, and this volume essays at least a glimpse of the colossus at Washington which for hundreds of lawyers plays the dual role of both master and client.

GOVERNMENT LAWYER is a record of the author's experiences and observations in various branches of service as a government lawyer, interspersed generously with the author's views on law, government, business, and economics.

Commencing his career of 16 years in the government service with the National Labor Relations Board, the author served in a turbulent and exciting moment of our history. It was a period which saw the epochal clash of labor and capital under the Wagner Act, the flowering of the New Deal and the advent of the Fair Deal, a hot war and a cold war, loyalty quizzes and the security frenzy. The imprint of the times runs through the pages of this book.

Hoffmann discusses many cases in which he played a part. The case of *United States* vs. *George Sylvester Viereck*, the notorious German spy and propagandist, is of more than passing interest. The author reveals the means by which the clever Viereck duped obliging Congressmen and Senators to disseminate his anti-American propaganda and subversion. As the author says, "many an innocent rode the caravan of isolationism" on a chariot paid for by Nazi gold.

The most revealing portion of the book is that dealing with the author's work in the Antitrust Division of the Department of Justice. Problems of monopolies, trusts, stifling of competition, affect all America. The giants of business are not as benign, Hoffmann reveals, as their institutional advertisements would have us believe.

General Electric's most important product, we learn on TV, is "progress." Yet GE was stifling progress—and America's war effort to boot!—when they raised the price of tungsten carbides from a profitable $48 per pound to a fantastic $453 per pound, simply because they had the monopoly on this vital material described as indispensable to industrial production.

Big business is not averse to making secret oral agreements to escape the eyes of the Antitrust Division. Nor will it hesitate to destroy or falsify its files to frustrate the government investigator. One business leader blandly told the government they keep records for only 30 days. This book reveals with force and clarity the evasion, concealment, and deceit practiced by big business in pursuit of economic advantage and profits.

Hoffmann writes with bitterness of how Congress can appropriate billions for a multitude of causes and yet the Antitrust Division was always understaffed and inadequate in manpower to cope with any but a minuscule of the problems of antitrust enforcement so important to the maintenance of a free society. And in an economic wave in 1951-2, the legal staff was slashed by 25%!

A sensitive and perceptive man, the author offers a personal testament on the life about us, the workings of law and lawyers, corruption in government and in business, the security witch hunts, legislative investigations and mink coats, freedom of expression and conscience, in short all the phenomena which have plagued and obsessed us in the post-war era.

Much of the book is devoted to a criticism of the government as an employer and to a defense of the lawyer in government service. The lawyer has for decades been a favorite whipping boy of both scholar and idiot, wit and half-wit. The government lawyer, in particular, believes the author, is caught in the cross-tides of unfavorable popular opinion and the pedestrian economics of making a living in a period of spiralling costs. Congress is notoriously slow-moving in granting salary increases, and not all government lawyers, reveals the author accept bribes.

The impact of the book is somewhat dimmed by an excess of "preaching." Nevertheless, *GOVERNMENT LAWYER* is the articulate expression of a cerebral man with literary and poetic instincts. Its non-technical style will appeal to lawyers and laymen alike.

BRAUDE'S SECOND ENCYCLOPEDIA OF STORIES, QUOTATIONS AND ANECDOTES. Compiled and Edited by Jacob M. Braude. Prentice-Hall, Inc. 468 pp. $4.95.

Reviewed by ELMER GERTZ

Going through this amusing volume, it is readily apparent that we have had Shaw and Darrow centennial celebrations here in Chicago and that Judge Braude has made them grist for his mills—or, rather, cards for his files. That, I would say, is the prime

characteristic of the good public speaker, and Judge Braude is assuredly one—that he seizes upon everything that is likely to interest the average man and turns it into stories, quotations and anecdotes. There are, by actual count, 2,842 of them here. Count them, if you will; better yet, read and use them, and know the pleasure of making your audience smile, laugh or guffaw.

In an introduction, Judge Braude tells us how to select interesting themes, construct a talk, deliver it, win and hold an audience, and, above all, quote others appropriately. "Don't forget," he says, "all work and no plagiarism makes a dull speech." Elsewhere he is again self-critical: "I should probably have pointed out in the beginning that this is no book for a hyper-developed conscience."

The book follows the formula created in its predecessor volume. The fact that there is a second volume is proof that there is something to the technique developed by the Judge. It is altogether likely that there will be a third volume and a fourth, until the 10,000 cards accumulated by Judge Braude during the years are used up. There is hardly ever too much of a good thing.

"He who never quotes is never quoted," according to the Reverend Spurgon. Bennett Cerf is one of those most quoted in this volume, and he has in his time quoted thousands of others, often without giving them credit. I know, because I am one of those of unheralded glory plagiarized by him. Ralph Waldo Emerson is even more frequently quoted, and all should rediscover that he is the most quotable of all classical American writers. But Shaw rates higher, and James Russell Lowell is almost as often quoted. Even Walter Winchell finds a place: "He didn't carve his career—he chiseled it." How true.

I don't know how many are capable of learning how to speak, or swim, or cook, from anyone's verbal instructions. But the Judge's advice in the forefront of this book strikes me as sound. You will certainly enjoy reading it, as well as the rest of the book, and something may stick to the ribs and develop your speaking apparatus.

THE SUPREME COURT SPEAKS, by Jerre S. Williams. University of Texas Press. 465 pp. $5.95.

Reviewed by RICHARD L. RITMAN

On the inside of the front paper flap of this volume are two statements by the publisher. One, that "Here are made available, between the covers of a single book, the text of the most important opinions in the history of the United States Supreme Court, from John Marshall's famous opinion in *Marbury* v. *Madison* through the recent segregation decision," is accurate. The other, that "Here also are skillful commentaries on these leading cases, showing how each has taken its place in the developing pattern of American law," is unfortunately somewhat less accurate.

Perhaps the author intended that the commentaries preceding the selected cases, in which he discusses the issues being litigated and the justice who wrote the opinion, would provide, along with the opinion itself, the necessary historical information to show "the developing pattern of American law." Regretfully the commentaries are too inadequate and superficial to achieve that worthy purpose. Neither the pattern nor the pattern-makers ever clearly emerge, except as hereinafter noted.

Author Williams is clearly an admirer of Mr. Justice Holmes ("Holmes elevated human freedom to a preferred place in our constitutional scheme."), and only in Part Four, The Era of Holmes, does he come close to bringing to the lay reader, for whom this book was written, a fully developed picture of the Court "at work". Only here can be seen what most lawyers know, or should know, that "The Constitution is what the judges say it is." Only in this section of the book do the justices emerge as something more than legal technicians and does the reader get some insight into the historical forces which shape decisions of our country's highest judicial tribunal.

In the first sentence of the Foreword the author states "This book was written in an attempt to let the United States Supreme Court tell its history in its own words." This reviewer can only suggest that the attempt has failed.

Even a carefully selected chronology of opinions, as this book is, leading jurists of this country, can achieve only limited objectives. It can give "proof of the constant role the Supreme Court has played in the vitalization of the Constitution"; it can demonstrate that judicial opinions can also have "merit as truly great literature"; and it can "reveal in interesting fashion the broad sweep of the legal problems which confront our Court"; but it cannot tell a history of the Supreme Court that is fully dimensional. (Compare, *Government By Judiciary*, by Louis B. Boudin, a scholarly history of the Court, albeit from the pen of one whose bias was no secret.)

Despite the criticism, this book, written for laymen, will delight lawyers who enjoy the leisure reading of well-reasoned opinions and who like to re-read from time to time the brilliant prose of a Holmes (as in *Gitlow* v. *New York*—"Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But what-

ever may be thought of the redundant discourse before us it had no chance of starting a present conflagration."), of a Brandeis (as in *Whitney* v. *California*—

> Those who won our independence believed that the final end of the States was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty.

Clarence Darrow Centennial

Reporter: RICHARD L. RITMAN

Member Samuel J. Baskin was chairman of the Darrow Centennial dinner held on May 1 in the Sherman Hotel. The event climaxed an all day program to memorialize the 100 anniversary of the birth of a fellow-Chicagoan Clarence Darrow, "a lawyer who never lost a client to the gallows or the electric chair." More than one thousand people attended the event which was held under the auspices of The Adult Education Council of Greater Chicago.

Past president Elmer Gertz long active in arranging this celebration, was exhibit chairman for the Centennial and presided over the opening of the Darrow exhibition in the Newberry Library. Upon request of the Yale University Law School the entire exhibit will be loaned to that university for a period of several months. Other Decalogue members who participated in the affair were Matilda Fenberg, Judge Harry M. Fisher, Barnet Hodes, Marvin Mindes, Michael Levin, and Richard L. Ritman.

An outstanding feature of the evening program was the performance of one of America's prominent actors, Melvyn Douglas, in a one act play "Mr. Darrow for the Defence" in which the artist recited portions of several pleas to the jury by Darrow, culled from that lawyer's sensational cases. Joseph N. Welch, Boston attorney who represented the army in the McCarthy hearing of 1954, spoke in eulogy of Darrow. The program included also addresses by many prominent civic leaders from Chicago and other parts of the country.

FINS ON THE JUDICIAL ARTICLE

The "Present State of the Illinois Judicial Article" was the subject of an address before our Society by member Harry G. Fins on May 17 at a luncheon in the Covenant Club. Fins discussed ably and at length the negative and affirmative aspects of the contents of the Judicial Article now pending before the Illinois legislature. In a near issue of The Decalogue Journal, it is expected, there will be published in some detail the substance of Fins' point of view.

The meeting was held under the auspices of The Decalogue Forum Committee, Louis L. Karton, chairman.

Lawyer's LIBRARY

Learning is an ornament in prosperity, a refuge in adversity, and a provision in old age. —ARISTOTLE

Bowen, D. C. *The Lion and the Throne; The Life and Times of Sir Edward Coke (1552-1634).* Boston, Little, Brown, 1956. 652p. $6.00.

Child Welfare League of America. *Study of Adoption Practice,* by Michael Shapiro. N.Y., 1956. 2 vols. $2.25 per vol.

Furneaux, Rupert. *Famous Criminal Cases III.* N.Y., Roy, 1957. 209p. $3.50.

Goddard, Henry. *Memoirs of a Bow Street Runner.* N.Y., Morrow, 1956. 253p. $4.75.

Howe, M. D. *Justice Oliver Wendell Holmes: The Shaping Years, 1841-1870.* Cambridge, Harvard Univ. Press, 1957. 336p. $5.00.

Illinois Legislative Council. *Legal Tests of Intoxication.* Springfield, Ill., 1956, 21p. Apply (Bulletin 2-616)

Low, Elmer. *How to Prepare and Try a Negligence Case.* Englewood Cliffs, N. J., Prentice-Hall, 1957. 224p. $5.65.

Paleologue, Maurice. *An Intimate Journal of the Dreyfus Case.* Transl. by Eric Mosbacher. N.Y., Criterion Books, 1957. 319p. $4.50.

Petro, Sylvester. *Labor Policy of the Free Society.* N.Y., Ronald, 1957. 339p. $5.00.

Pirsig, M. E. *Cases and Materials on the Standards of the Legal Profession.* St. Paul, West, 1957. 211p. $5.00.

Pound, Roscoe. *The Development of Constitutional Guarantees of Liberty.* New Haven, Yale Univ. Press, 1957. 207p. $3.50.

Schaar, J. H. *Loyalty in America.* Berkeley, Univ. of California Press, 1957. 217p. $3.50.

Stason, E. B. and Cooper, F. E. *Law of Administrative Tribunals.* Rev. ed. Chicago, Callaghan, 1957. 778p. $10.00.

Williams, H. R. and Meyers, C. J. *Oil and Gas Terms; Annotated Manual of Legal Engineering, Tax Words & Phrases.* Albany, Banks & Co., 1957. 288p. $10.00.

Wincor, Richard. *How to Secure Copyright; The Law of Literary Property.* Rev. ed. N.Y., Oceana, 1957. 96p. $2.00. (Paper, $1.00) (Legal almanac ser., no. 21)

Callaghan's Illinois Digest. 3d ed. Vols. 20 & 21. Chicago, Callaghan, 1956. $17.50 each.

Banay, R. S. *We Call Them Criminals.* N.Y., Appleton-Century- Crofts, 1957. 305p. $3.95.

Can, Helen Maud. *Law as It Looks to a Historian.* Cambridge. W. Heffer. 1956. 25p. Carswell, $0.50.

Hazard, J. N. *Soviet System of Government.* Chicago. Univ. of Chicago Press, 1957. 284p. $4.00.

Kelsen, Hans. *What Is Justice? Justice, Law, and Politics in the Mirror of Science.* Collected essays by Hans Kelsen. Berkeley, Univ, of California Press, 1957. 397pp. $7.50.

Lazarus, Harold. *American Business Dictionary.* N.Y., Philosophical Library, 1957. 522p. $10.00.

Rodell, Fred. *Woe Unto You, Lawyers!* (2d ed.) N.Y., Pageant Press, 1957. 184p. $3.50.

Bradford, S. H. & Greenberg, J. H. *Canadian Bankruptcy Act.* 3d ed. 1956 supp. Toronto, Burroughs, 1956.

Political Handbook of the World. 1957. N.Y., Harper for the Council on Foreign Relations, Inc., 1957. $3.95.

Words and Phrases. 1957 pocket parts. St. Paul, West, 1957.

THEY SEEK EMPLOYMENT

Recent law school graduates, members of our Society, seek immediate employment in law offices. Many, prior to their admission to the Bar, acquired considerable experience working as law clerks. If there is an opening in your law office or if you know of one elsewhere, please communicate with Michael Levin, chairman of our Placement Committee, 30 North LaSalle Street, ANdover 3-3186.

SORROW

The Decalogue Society of Lawyers announces with deep regret the death of member Samuel M. Ash.

CHARLES E. KAYE

Member Charles E. Kaye was elected president of the Chicago Consumptive Aid Society and Fox River Sanitarium, Batavia, Illinois.

DECALOGUE LUNCHEON MEETINGS

On Friday of each week the Board of Managers of The Decalogue Society of Lawyers meets in a private dining room for luncheon, at noon, at the Covenant Club, 10 North Dearborn Street. Members are invited to attend, listen to committee reports, and learn of the activities of our Bar Association. No reservations necessary.

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